

London Borough of Camden
Regeneration and Planning
5 Pancras Square
London
N1C 4AG

For the attention of Ms Miriam Baptist

Dear Miriam

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

**SECTION 73 APPLICATION TO REMOVE CONDITION 2 SCHEDULED TO PLANNING PERMISSION
P9600597 DATED 24th MARCH 1997**

50-52 MONMOUTH STREET, LONDON WC2H 9EP

PLANNING PORTAL REFERENCE: PP-12460539

On behalf of the applicant, Shaftesbury Covent Garden Ltd, we submit a Section 73 application to remove Condition 2 of historic planning permission P9600597. The application fee of £234.00 has been paid via the Planning Portal.

The following information is attached in support of this application:

- Application Forms, prepared by Rolfe Judd Planning;
- Copy of approved plans from planning permission P9600597;
- CIL Forms, prepared by Rolfe Judd Planning.

Site and Surroundings

50-52 Monmouth Street is a four storey building situated at the corner of Monmouth Street (east) and Tower Street (west). The basement, ground and first floors are in use as a restaurant (Class E) whilst the upper floors are in use as offices (Class E). The site is unlisted, and does not contain any heritage assets but is situated within the Seven Dials Conservation Area, the West End Retail and Leisure Special Policy Area (WERLSPA) and the Central Activities Zone.

This planning application relates to the restaurant unit at basement, ground and first floors.

Background

Planning permission (ref. P9600597) was granted at appeal (ref: T/APP/X5210/A/96/268790/P4) on the 24th of March 1997 for the following scheme:

'Alteration and extension, involving infilling of lightwell in connection with proposed dual A1/A3 (shops/food and drink) use at ground floor and basement, dual B1/A3 (business/food and drink) use at first floor and B1 (business) use at second and third floors. (Plans submitted).'

OLD CHURCH COURT, CLAYLANDS ROAD, LONDON SW8 1NZ

T 020 7556 1500 / www.rolfe-judd.co.uk

Rolfe Judd Holdings Limited. Registration No.4198298 / Rolfe Judd Architecture Limited. Registration No.1439773 / Rolfe Judd Planning Limited. Registration No.2741774
Registered at the above address

Accordingly, permission was granted subject to the following restrictive condition:

2. *‘the basement, ground and first floors of the Class A3 use here permitted shall be used as a restaurant only and for no other purpose (including any other purpose within Class A3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification’.*

This condition was imposed on the planning permission for the purpose of restricting these floors to a restaurant use only within the permitted Class A3, as this use was considered “*less likely to give rise to noise and disturbance in the street than other A3 uses*”, as stated in Paragraph 15 of the Appeal Statement.

Despite the flexible uses permitted by planning permission P9600597, the basement, ground and first floors have been in use as a restaurant for over 20 years, and therefore now have a lawful use as a restaurant under Class E(b). The second and third floors are in use as offices (Class E).

At the time of the decision, Class A3 permitted the “use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises”. The purpose of Condition 2 was therefore to restrict the use of these floors as a hot food takeaway use under the former Class A3. As this use is now a ‘Sui Generis’ use and no longer falls within the same use class as a restaurant, the condition wording is somewhat redundant.

The decision was issued prior to the significant amendments made to the Use Classes Order in September 2020 under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, including most notably, the introduction of Class E. The applicant is currently reviewing the development opportunities for the site and consider that restricting the use to a restaurant use only is unduly restrictive in light of the introduction of Class E which allows for a mix of uses to establish within a building that are appropriate within town centre locations.

Following a careful review of the building uses by the applicant, this Section 73 application now seeks to remove Condition 2 which currently hinders the future letting of the premises for alternative uses at basement, ground and first floors. This will provide maximum flexibility for the applicant to adapt and diversify to meet changing demands and market pressures.

It is noted that any additional mechanical plant or servicing which may be required by future tenants would be subject to a separate planning application for determination by the Council.

Proposed Amendments to Conditions

As noted above, the applicant seeks to remove Condition 2 to ensure the successful re-letting of the unit if desired in future. For clarity, the changes sought to the conditions imposed on planning permission P9600597 are set out in the table below:

Condition Wording	Amendments / Reasoning
<i>2. the basement, ground and first floors of the Class A3 use here permitted shall be used as a restaurant only and for no other purpose (including any other purpose within Class A3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification</i>	<p>Delete Condition 2.</p> <p>This condition is unduly restrictive and redundant in light of the changes to the Use Classes Order since the application was determined.</p>

Planning Considerations

Accordingly, the NPPF makes clear under Paragraph 56 that planning conditions should be kept to a minimum, and only used where necessary:

“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”
Further guidance on the use of conditions is provided by the Government under the Planning Practice Guidance, stating that:

“The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls”. (Paragraph: 001 Reference ID: 21a-001-20140306)

The proposed application to remove Condition 2 would meet the above guidance, being considered fair, reasonable and practical given the current economic and market conditions and the specific nature of those conditions previously tailored to prohibit certain uses from being established on the site (i.e., hot food takeaway uses within the former Use Class A3).

London Plan Policy SD4 relates to the Central Activities Zone and states that the rich mix of strategic functions and local uses within the CAZ should be promoted and enhanced. Further, the policy states that the vitality, viability, adaptation and diversification of the WERLSPA should be supported.

Policy E1 of the Camden Local Plan relates to economic development and states that the Council will secure a successful and inclusive economy in Camden by creating the conditions for economic growth and harnessing the benefits for local residents and businesses.

Policy TC2 (Camden’s centres and other shopping areas) of the Local Plan highlights that the Council will seek to promote successful and vibrant centres to serve the needs of the borough through the provision and maintenance of a range of shops including independent shops, services, food, drink and entertainment and other suitable uses to provide variety, vibrancy and choice.

By removing the restrictive Condition 2 this will enable greater flexibility for the applicant to quickly re-let the unit as required (either as a larger unit or for its subdivision) to suit changing market demands.

A restaurant use has been operating on the site since the mid-1990’s, with no complaints received in regard to amenity concerns, noise or odour. If the unit is subdivided into two smaller units, any additional plant or mechanical services required will be assessed, and any relevant planning permissions will be sought where necessary for their instalment. There will be no impact on residential amenity of surrounding neighbours as a direct effect of the changes sought by this application.

Summary

This Section 73 application seeks to remove condition 2 from planning permission P9600597 to remove the restrictions on use of the basement, ground and first floors under Class E.

It is therefore considered acceptable to delete this condition to allow the applicant greater flexibility to let the unit to a new occupier under Class E, if desired. This change will align with the intention of the amendments to the Use Classes order, which seek to enable greater flexibility for units to change to other ‘high street uses’ uses within centre locations to reflect changing market requirements and demands.

This application therefore seeks to delete Condition 2 of planning permission P9600597. We trust you have sufficient information to determine this application positively; however, should you require any further information please do not hesitate to contact the undersigned.

Yours faithfully

Ailish Collins

For and on behalf of
Rolfe Judd Planning Limited